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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/732,736	12/10/2003	Ashish Kundu	JP920030195US1	6678
7590 Frederick W. Gibb, III McGinn & Gibb, PLLC Suite 304 2568-A Riva Road Annapolis, MD 21401		08/20/2007	EXAMINER TIV, BACKHEAN	
			ART UNIT 2151	PAPER NUMBER
			MAIL DATE 08/20/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/732,736

Applicant(s)

KUNDU, ASHISH

Examiner

Backhean Tiv

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12/10/2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15, 26-30 and 32 is/are pending in the application.
- 4a) Of the above claim(s) 16-25, 31 and 33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15, 26-30 and 32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 12/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

***Detailed Action***

Claims 1-33 are pending in this application. There was a preliminary amendment filed on 12/10/2003, in which claims 1,15,16 were amended.

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-15,26-30,32, drawn to a system that selects a monitoring entity that meets certain requirements, classified in class 709, subclass 223.
- II. Claims 16-25,31,33, drawn to monitoring active set of monitoring functions and modifying the active set of monitoring functions, classified in class 709, subclass 201.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination I has separate utility such as selecting a monitoring entity that meets the consumer's requirement. See MPEP § 806.05(d).

The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a

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continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

During a telephone conversation with Mohammad S.Rahman on 7/30/07 a provisional election was made without traverse to prosecute the invention of Group 1, claims 1-15,26-30,32. Affirmation of this election must be made by applicant in replying to this Office action. Claims 16-25,31,33 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

#### ***Information Disclosure Statement***

The IDS filed on 12/10/03 has been considered.

#### ***Drawings***

The Drawings submitted on 12/10/2003 are acceptable.

#### ***Claim Objections***

Claims 29 is objected to because of the following informalities:

As per claim 29, recites "the fist data", this is a misspelling. The examiner will assume "fist" as "first".

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7,13,15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 recites the limitation "the output data". There is insufficient antecedent basis for this limitation in the claim.

The term "best" in claims 13,15 is a relative term which renders the claim indefinite. The term "best" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-12,14,26-30,32 are rejected under 35 U.S.C. 102(b) as being anticipated by US Publication 2002/0029185 issued to Tanaka et al.(Tanaka).

As per claim 1, Tanaka teaches a method for monitoring resources of a data processing network on behalf of consumer entities within the network(Abstract),

comprising the steps of: determining monitoring requirements of a consumer entity(para.0005); comparing the monitoring requirements of the consumer entity with the monitoring capabilities of a plurality of monitoring entities to identify at least one monitoring entity having monitoring capabilities matching the monitoring requirements of the consumer entity(Abstract, para.0017); and in response to identifying at least one monitoring entity having monitoring capabilities matching the monitoring requirements of the consumer entity, selecting at least one of the identified monitoring entities and binding the consumer entity to the selected at least one monitoring entity(Abstract, para.0017,0018).

As per claim 2, the method of claim 1, wherein binding the consumer entity to the selected at least one monitoring entity comprises establishing a connection between the consumer entity and the selected at least one monitoring entity, sending a description of the consumer entity's monitoring requirements to the selected at least one monitoring entity, and configuring the selected at least one monitoring entity to perform the required monitoring(Tanaka, Abstract, Fig.1, para.0005,0017).

As per claim 3, the method of claim 1 wherein the step of comparing requirements with capabilities comprises comparing requirements with a set of currently active monitoring capabilities of each of the plurality of monitoring entities(Tanaka, para.0032).

As per claim 4, the method of claim 1 wherein the step of comparing requirements with capabilities comprises comparing required monitoring metrics with

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monitoring metric capabilities of each of the plurality of monitoring entities(Tanaka, para.0031,0032).

As per claim 5, the method of claim 1 wherein the step of comparing requirements with capabilities comprises comparing a required monitoring period with monitoring period capabilities of each of the plurality of monitoring entities(Tanaka, para.0031,0032).

As per claim 6, the method of claim 1 wherein the step of comparing requirements with capabilities comprises comparing a required monitoring granularity with monitoring granularity capabilities of each of the plurality of monitoring entities(Tanaka, para.0031,0032).

As per claim 7, the method of claim 1 wherein the step of comparing requirements with capabilities comprises comparing a required data format for monitoring data with the output data format capabilities of each of the plurality of monitoring entities(Tanaka, para.0038,0039).

As per claim 8, the method of claim 1 further comprising the steps of: the consumer entity sending a description of its monitoring requirements to a repository; the plurality of monitoring entities sending descriptions of their respective monitoring capabilities to the repository; and storing the descriptions of requirements and capabilities in the repository; wherein the comparing step comprises comparing the descriptions of requirements and capabilities stored in the repository(Tanaka, Fig.4-5 para.0033,0035).

As per claim 9, the method of claim 8, further comprising the step of creating a binding document describing the monitoring performed for the consumer entity by the selected at least one monitoring entity, and sending the binding document to the repository(Tanaka, Fig. 4-5 para. 0033, 0035).

As per claim 10, the method of claim 8 wherein the descriptions of monitoring entities capabilities comprise a list of the metrics currently being monitored for each of a set of monitored resources(Tanaka, Fig. 4-5 para. 0033, 0035).

As per claim 11, the method of claim 10 wherein the descriptions of monitoring entities capabilities comprise currently active monitoring parameters for each monitoring metric(Tanaka, Fig. 4-5 para. 0033, 0035).

As per claim 12, the method of claim 10 wherein the descriptions of monitoring entities capabilities comprise the output data format for each monitoring metric(Tanaka, Fig. 4-5 para. 0033, 0035).

As per claim 14, the method of claim 1, further comprising the step of: using a common sub-expression finder module to identify a monitoring entity having at least one sub-expression in common with the consumer entity, and selecting the monitoring entity having the at least one common sub-expression(Tanaka, Abstract, Fig. 1, para. 0005, 0017).

As per claim 27, the data processing system of claim 26, wherein the monitoring manager comprises: a component for handling registration and de-registration of consumer entities and monitoring entities with a monitoring subsystem; a selector for selecting at least one monitoring entity for a consumer entity; and a connection



manager for establishing a connection between the consumer entity and the selected monitoring entity(Tanaka, Abstract, Fig.1, para.0022,0017).

As per claim 28, the data processing system of claim 26, wherein the monitoring manager comprises a resource optimizer for determining a set of one or more monitoring entities capable of generating required monitoring data from data measured for a resource(Tanaka, Abstract,para.0038,0039).

As per claim 30, the distributed data processing system of claim 29, wherein the monitoring manager comprises a set of computer program components distributed across a plurality of data processing apparatuses(Tanaka, Abstract, Fig.1).

As per claims 26,29,32, do not teach or further define over the limitations in claims1-12,14. Therefore claims 26,29,32 are rejected for the same reasons set forth above.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13,15 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Publication 2002/0029185 issued to Tanaka et al.(Tanaka) in view of US Patent 6,154,778 issued to Koistinen et al.(Koistinen).

As per claim 15, Tanaka teaches a method for monitoring resources of a data processing network on behalf of consumer entities within the network(Abstract), comprising the steps of: determining the monitoring requirements of a consumer entity(para.005); comparing the monitoring requirements of the consumer entity with the monitoring capabilities of a plurality of monitoring entities to determine whether any monitoring entities have monitoring capabilities matching the monitoring requirements of the consumer entity(Abstract, para.0017,0018).

Tanaka however does not explicitly teach initiating a negotiation between the consumer entity and a plurality of monitoring entities to select a best match between the monitoring requirements of the consumer entity and the monitoring capabilities of the plurality of monitoring entities.

Koistinen teaches initiating a negotiation between the consumer entity and a plurality of monitoring entities to select a best match between the monitoring requirements of the consumer entity and the monitoring capabilities of the plurality of monitoring entities(Abstract, col.2, lines 40-67).

Therefore it would have been obvious to one ordinary skill in the art at the time of the invention to modify the teachings of Tanaka to include initiating a negotiation between the consumer entity and a plurality of monitoring entities to select a best match between the monitoring requirements of the consumer entity and the monitoring capabilities of the plurality of monitoring entities as taught by Koistinen in order to enable utility-based multi-category quality of service negotiation in distributed systems(Koistinen, col.1, lines 5-12).

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One ordinary skill in the art would have been motivated to combine the teachings of Tanaka and Koistinen in order to to enable utility-based multi-category quality of service negotiation in distributed systems(Koistinen, col.1, lines 5-12).

As per claim 13, the method of claim 1, further comprising the step of: in response to a failure to identify at least one monitoring entity having monitoring capabilities matching all monitoring requirements of the consumer entity, initiating a negotiation between the consumer entity and a plurality of monitoring entities to select a best match between the monitoring requirements of the consumer entity and the monitoring capabilities of the plurality of monitoring entities(Koistinen, Abstract, col.2, lines 40-67). Motivation to combine set forth in claim 15.

### ***Conclusion***

**Examiner's Note:** Examiner has cited particular columns and line numbers in the references as applied to the claims above for the convenience of the applicant.

Although the specified citations are representative of the teachings of the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in its entirety as potentially teaching of all or part of the claimed invention.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

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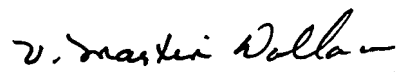
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Backhean Tiv whose telephone number is (571) 272-5654. The examiner can normally be reached on M-F 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Valencia Wallace can be reached on (571) 272-3440. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



BackheanTiv  
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8/13/07

  
VALENCIA MARTIN-WALLACE  
PRIMARY EXAMINER